IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.4264 of 2006

Dhirajlal Ratanshi Somaiya Petitioner

Vs.

Shree Padmanabh Builders & ors. Respondents

Mr.N.V.Walawalkar, Sr.Counsel with Mr.Murlidharan V.C. for petitioner.

Mr.P.K.Dhakephalkar, Sr.Counsel with Mr.P.S.Dani and Mr.A.L.Gala for Respondent Nos.1 and 2.

CORAM: B.H.MARLAPALLE,J.

August 02, 2006.

P.C.

. Heard Mr.Walawalkar, the learned Senior Counsel with Mr.Murlidharan for the petitioner - original defendant no.1 and Mr.Dhakephalkar, the learned Sr.Counsel with Mr.Dani and Mr.Gala for Respondent Nos.1 and 2.

. The petitioner who is the appellant in Appeal No.419 of 2004 arising from the decree passed in RAE & R Suit No.1046/3040 of 1990 had submitted an application which came to be registered as Interim

Application No.5140 of 2004 in the said appeal and prayed for a declaration that the Vakalatnama filed by the respondent no.2 on behalf of the respondent no.1 stood cancelled and for further direction to issue a fresh summons on respondent no.1 personally. There is no doubt that the Respondent no.1 in the pending appeal is Shree Padmanabh Builders, a firm registered under the Indian Partnership Act and Respondent No.2 is Shri Kanayyalal Madhavji Thakkar who at the relevant time came to be the power of attorney holder for respondent no.1. Based on the letters dated 23/6/2004 and 22/6/2004 addressed by the Solicitors of Respondent No.1 to Respondent no.2 the petitioner claimed that the power of attorney given by respondent no.1 to respondent no.2 was no more valid and, therefore, the authority filed on behalf of the respondent no.1 at the instance of respondent no.2 could not be treated to be valid and the said respondent no.1 was required to be represented through some other Advocate after the summons were issued on the said party. The lower Appellate Court was pleased to discharge Interim notice i.e. Interim Application No.5140 of 2004.

. The letters dated 22/6/2004 and 23/6/2004,

prima facie, appear to be concerning Suit No.4657 of 1994 pending before this Court between M/s. Parekh Market Premises Co-op. Society Ltd. v. M/s. Padmanabh Builders and ors. and whether the property concerned in the said suit is the same property which is a subject matter of the pending appeal before the lower Appellate Court is a matter of evidence. Secondly, as per the contentions of the petitioner himself one of the issues involved in the suit and obviously in the pending appeal is to the effect that the power of attorney dated 6/8/1990 in favour of respondent no.2 is a forged document and / or that it does not pertain to the suit property. Undoubtedly the lower Appellate Court will adjudicate upon this issue and if such an issue is answered in favour of the appellant, the Court would take appropriate steps for giving suitable directions for the parties being represented in the appeal. At this stage when the appeal is pending, the lower Appellate Court has rightly refused to take cognizance of the said letters relied upon by the petitioner and this impugned order in no way comes as a hindrance for the appellant to get the issue regarding the power of attorney adjudicated.

. In these circumstances, the order impugned cannot be said to be either perverse or patently erroneous so as to call for interference in the petition under Article 227 of the Constitution. The petition is, therefore, rejected summarily. The appeal is directed to be expedited.

(B.H.MARLAPALLE,J.)